

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Robert Derek Lurch, Jr., *a/k/a Robert Lurch*,

Plaintiff,

-against-

Police Officer Kevin Menendez, *Tax No. 954127*,

Defendant.

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DIANE GUJARATI, United States District Judge:

By Complaint dated September 26, 2019, Plaintiff Robert Derek Lurch, Jr., proceeding *pro se*, commenced this action in the United States District Court for the Southern District of New York against numerous defendants. *See generally* Complaint, ECF No. 2. Plaintiff later filed an Amended Complaint. *See generally* Amended Complaint, ECF No. 4. Subsequently, by Order of then-Chief Judge Colleen McMahon of the United States District Court for the Southern District of New York, the action was transferred to the United States District Court for the Eastern District of New York. *See* Oct. 15, 2019 Transfer Order, ECF No. 5. By Order dated December 12, 2019, United States District Judge Ann M. Donnelly dismissed Plaintiff's Amended Complaint except as against Defendant John Doe Officer M. *See* Memorandum Decision and Order at 1, 5-6, ECF No. 9. John Doe Officer M was later identified to be Police Officer Kevin Menendez, *see* Letter, ECF No. 28, and the case caption was amended accordingly, *see* Aug. 25, 2020 Order. On December 16, 2020, this action was reassigned from Judge Donnelly to the undersigned.

By letter dated August 18, 2021, Defendant Menendez moved to dismiss the instant action pursuant to Rules 16(f) and/or 41(b) of the Federal Rules of Civil Procedure. *See* Motion

MEMORANDUM & ORDER
19-CV-06011 (DG) (SJB)

to Dismiss for Lack of Prosecution (“the Motion”), ECF No. 54.¹ On November 22, 2021, I referred the Motion to Judge Bulsara for a Report and Recommendation (“R&R”). *See* Nov. 22, 2021 Order.

On December 9, 2021, Judge Bulsara issued an R&R recommending that the Motion be denied. *See* R&R at 1, 5, ECF No. 58. No objection to the R&R has been filed, and the time for doing so has passed. *See id.* at 5-6.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). To accept those portions of an R&R to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Jarvis v. N. Am. Globex Fund, L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quotation marks omitted).

I have reviewed Judge Bulsara’s R&R, and, having found no clear error, adopt the R&R in its entirety.

Accordingly, Defendant Menendez’s Motion to Dismiss for Lack of Prosecution, ECF No. 54, is denied.

SO ORDERED.

/s/ Diane Gujarati
DIANE GUJARATI
United States District Judge

Dated: February 14, 2022
Brooklyn, New York

¹ The August 18, 2021 letter was addressed to Magistrate Judge Sanket J. Bulsara and, accordingly, requested that “the Court *recommend* dismissal of the instant action.” *See* Motion at 1 (emphasis added).